

HONORABLE JUDGE FRED VAN SICKLE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

ALLEN M. WALL, et al.,

Plaintiffs,

v.

DELTA PETROLEUM
CORPORATION, et al.

Defendants.

NO. CV-09-5027-FVS

STIPULATION FOR PROTECTIVE
ORDER

STIPULATION FOR PROTECTIVE
ORDER [CV-09-5027-FVS] - 1

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1
2 The parties to this action stipulate to the following Protective Order to apply
3 to documents and information produced or disclosed. Any non-party that is
4 required to produce data in this action may also seek protection if it stipulates to
5 the following. As used herein parties and non-parties alike are referred to as
6 “entities.”
7

8 1. Any entity producing documents or things containing information to
9 be governed by this Protective Order, shall designate the document or thing by
10 labeling it “CONFIDENTIAL PRODUCED PURSUANT TO PROTECTIVE
11 ORDER” or “FOR ATTORNEYS’ EYES ONLY, PRODUCED PURSUANT TO
12 PROTECTIVE ORDER.”
13

14 1.1 An entity may designate items of discovery or other information
15 produced or disclosed as “CONFIDENTIAL PRODUCED PURSUANT TO
16 PROTECTIVE ORDER” only after making a good faith determination that the
17 documents contain financial information; trade secrets; confidential research,
18 development, or commercial information; or other information entitled to
19 protection pursuant to Fed. R. Civ. P. 26 (c). Such designations shall not be made
20 for documents which describe or embody typical business practices, equipment
21

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1 designs or trade practices, or information available to the public. The designation
2 shall only be applied to so much of a document or data compilation that is entitled
3 to such protection. Designation shall make such items and all copies, prints,
4 summaries, or other reproductions of such information subject to this Order.
5

6 1.2 Entities may designate “FOR ATTORNEYS’ EYES ONLY
7 PRODUCED PURSUANT TO PROTECTIVE ORDER” information, documents,
8 or materials that constitute or contain proprietary, trade secret or other confidential
9 research, development, or commercial information which is so proprietary or
10 competitively sensitive that its disclosure is likely to cause irreparable competitive
11 or commercial injury to the Producing Entity.
12

13 1.3 A Producing Entity may in good faith redact non-responsive “FOR
14 ATTORNEY’S EYES ONLY INFORMATION” from any produced document or
15 material. The redacted document will be labeled on its first page, and at the
16 place(s) of the redaction, as “ATTORNEYS’ EYES ONLY INFORMATION
17 REDACTED.” Unredacted copies of such documents shall be maintained by the
18 Producing Entity together with the redacted versions. Outside counsel for a
19 discovering party and, if necessary, qualified experts retained by them, may have
20 reasonable access to the redacted and unredacted versions of the documents but
21

1 only for the purpose of ascertaining the appropriateness of any redactions.

2 2.1 Unless otherwise ordered by the court, information designated as
3 “CONFIDENTIAL PRODUCED PURSUANT TO PROTECTIVE ORDER” may
4 be used only for purposes of this litigation, and may be disclosed in this litigation
5 only to the parties, their counsel, counsel’s staff and disclosed consultants and
6 experts. Any consultants or experts who review or have access to information
7 designated as “CONFIDENTIAL PRODUCED PURSUANT TO PROTECTIVE
8 ORDER” must review this Order and must execute an acknowledgement in the
9 form attached hereto as Exhibit A, a copy of which will be maintained by counsel
10 for the party retaining the expert or consultant and produced to the producing entity
11 at the conclusion of the case.
12

13
14 2.2 “ATTORNEY’S EYES ONLY INFORMATION” will not be
15 disclosed to or used by anyone except the following persons and by these persons
16 solely for purposes of this litigation:

17 a. The parties, beneficial owners, certificate holders, or investors, and
18 parties to the relevant trusts’ pooling, servicing, and insuring
19 agreements, and their officers, directors, employees and
20 representatives who have need for such information for purposes of
this litigation;

21 b. In-house and outside counsel the parties and their staff necessarily

involved in the conduct of this litigation;

- c. Persons not employees of any party who are expressly retained to assist such party's counsel in this action including, but not limited to, consulting and testifying experts, non-technical consulting services, independent auditors, accountants, statisticians, economists, and other experts, and the employees of such persons, but only to the extent reasonably necessary to enable such Expert to render such assistance;
- d. During deposition or hearing, any deposition or hearing witness where necessary to the testimony of such witness;
- e. Any person who prepared, viewed or received such information prior to this or other litigation involving the Producing Entity;
- f. Court personnel, the arbitrator, court reporters, and similar personnel; or
- g. Any other person with the prior written consent of the Producing Entity.

2.3 "FOR ATTORNEY'S EYES ONLY INFORMATION" so designated, and information derived therefrom, will not be disclosed to or used by anyone except outside counsel for the parties or *as otherwise set forth in this Stipulated Protective Order*.

2.4 Disclosure of "FOR ATTORNEY'S EYES ONLY INFORMATION" may be made to Experts who are actively assisting in the preparation and trial of this action. However, any Expert employed by any competitor of any Producing

1 Entity who may have access to the “FOR ATTORNEY’S EYES ONLY
2 INFORMATION” of any Producing Entity must sign a specialized Confidentiality
3 Acknowledgment that specifically forewarns the expert that in the event any
4 confidential information is used or disseminated in violation of this Protective
5 Order, the expert, and his employer, may be subject to a motion in this cause of
6 action for imposition of sanctions in the liquidated sum of \$10,000 in addition to
7 the potential for an independent cause of action by the Producing Entity for actual
8 damages as well as the potential for prosecution for theft.
9

10 Prior to disclosing any “FOR ATTORNEY’S EYES ONLY
11 INFORMATION” to any Expert, Counsel for the party contemplating such
12 disclosure shall: (i) determine if the Expert is (or intends to become) affiliated with
13 or employed by any entity that is in the business of exploration for, and the
14 acquisition, development, and production of natural gas and crude oil, other than as
15 an outside retained expert employed by any Competitor of any Producing Entity;
16 and (ii) affirm that each Expert has executed a Confidentiality Acknowledgement
17 or Specialized Confidentiality Acknowledgement. Counsel for the party obtaining
18 an Expert’s signature on the Acknowledgement shall retain the original signed
19 acknowledgement and, if the Court so orders, shall provide a copy of the signed
20
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1 acknowledgement to all counsel of record.

2 3. If any information designated as “CONFIDENTIAL PRODUCED
3 PURSUANT TO PROTECTIVE ORDER” or “FOR ATTORNEY’S EYES ONLY
4 PRODUCED PURSUANT TO PROTECTIVE ORDER” is to be filed with or
5 submitted to the Court in connection with any proceedings in this action, such
6 information shall be filed in sealed envelopes or containers marked with the name
7 of the case and the notation that it includes confidential information. Courtesy
8 copies of pleadings, papers or correspondence delivered to the Court or its clerk
9 that contain confidential information shall also be so sealed and marked.
10

11 4. Any entity may object in writing to the designation by another entity
12 of any information or material as “CONFIDENTIAL PRODUCED PURSUANT
13 TO PROTECTIVE ORDER” or “FOR ATTORNEY’S EYES ONLY
14 PRODUCED PURSUANT TO PROTECTIVE ORDER.” The objection must
15 specify the material or information for which the designation is challenged. The
16 entity whose designations have been objected to may, after conferring with the
17 objecting entity, move within fourteen (14) days to retain the protection designated
18 on such information or material. If no motion is filed within such period, the
19 information or material shall no longer be treated as “CONFIDENTIAL
20
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1 PRODUCED PURSUANT TO PROTECTIVE ORDER.” If such a motion is
2 timely filed, the objecting entity shall file a response within ten (10) calendar days,
3 and unless and until the Court enters an Order to the contrary, the information or
4 material shall be treated as “CONFIDENTIAL PRODUCED PURSUANT TO
5 PROTECTIVE ORDER” or “FOR ATTORNEY’S EYES ONLY
6 INFORMATION.”
7

8 4.1 Deposition testimony that one of the parties reasonably believes will
9 contain Confidential Information shall only be taken in front of persons entitled to
10 access such information as set forth in this Stipulation and Protective Order and
11 may be designated as Confidential by the Designating Party as follows:
12

- 13 i. By a statement on the record at the deposition that such testimony
14 shall be treated as Confidential Information; or
- 15 ii. By written notice, sent by counsel to all parties within ten (10)
16 business days after receiving a copy of the transcript thereof. All
17 counsel who receive such written notice shall mark the transcript as
18 directed by the Designating Party. After ten (10) business days, only
19 those portions of any transcript designated as “Confidential
20 Information” shall be deemed Confidential. All parties shall treat all
21 transcripts as Confidential until the ten (10) days has elapsed. The
22 Parties may modify this procedure for any particular deposition
through agreement on the records at such deposition or otherwise by
written stipulation, without further order of the court.

- 21 iii. In addition, any party seeking to use information designated as

1 Confidential during a deposition shall seek the deponent's agreement
2 on the record to abide by the terms of this Stipulation and Protective
3 Order. If the deponent refuses to assent, disclosure of such
4 information to the witness during the deposition shall not constitute a
5 waiver of confidentiality. Under such circumstances, the witness shall
6 be asked to sign the original deposition transcript in the presence of
7 the court reporter, and no copy of the transcript or related exhibits
8 shall be given to the deponent.

9 4.2 "FOR ATTORNEY'S EYES ONLY INFORMATION" may only be
10 used when deposing (a) an individual who is or was employed with the Producing
11 Entity or (b) an Expert who is not employed by a competitor of any Producing
12 Entity. In such circumstances, prior to showing such "FOR ATTORNEY'S EYES
13 ONLY INFORMATION" to the deponent, counsel noticing the deposition shall
14 show counsel for the Producing Entity, if it is a party to the action, the "FOR
15 ATTORNEY'S EYES ONLY INFORMATION" to be used at deposition. At such
16 time, counsel for the Producing Party may object to the proposed disclosure. If
17 such objection is made, the objection shall be presented promptly by telephone to
18 the court or its designees so as not to delay the deposition unnecessarily and such
19 disclosure shall not be made until the Court or its designees have ruled on the
20 objection or the Producing Party has withdrawn the objection. If no objection is
21 made, or if the court overrules the objection, a copy of such "FOR ATTORNEY'S

1 EYES ONLY INFORMATION” may be used in the deposition. The original of
2 such document, material, or printout must be returned to and kept in a secured
3 room and the copy or copies must either be destroyed after the conclusion of the
4 deposition or, if made a deposition exhibit, shall be placed in a sealed envelope
5 that bears a legend “FOR ATTORNEY’S EYES ONLY INFORMATION.” If
6 counsel desires to use “FOR ATTORNEY’S EYES ONLY INFORMATION” with
7 any other witness, counsel must first seek agreement from the Producing Entity
8 and, if agreement cannot be reached, seek leave from the court.
9

10 5. Confidential information may be used as trial exhibits in this action
11 and shall continue to be marked as confidential throughout trial. “FOR
12 ATTORNEY’S EYES ONLY INFORMATION” to be used at trial will be subject
13 to strict confidentiality, and procedures for use of the same will be addressed as
14 part of the Pre-Trial Order.
15

16 5.1 Storage and handling of “FOR ATTORNEY’S EYES ONLY
17 INFORMATION” shall be in accordance with the following:
18

- 19 i. “FOR ATTORNEY’S EYES ONLY INFORMATION,” including all
20 summaries, abstracts or other documents or portions thereof
21 containing substantive information from such “FOR ATTORNEY’S
EYES ONLY INFORMATION” (but not including “attorney work
product” as defined in Fed. R. Civ. P. Rule 1-026(b)(3)(B) (i.e. the

1 attorney's mental impressions, conclusion, opinions, or legal theories
2 concerning the litigation), provided, however, that such "attorney
3 work product" does not contain or disclose, directly, or indirectly, any
4 Attorneys' Eyes Only Information), shall be maintained in a secured
5 and locked location at the Outside Counsel's Law offices.

- 6 ii. All printouts of documents produced in electronic form must be
7 immediately stamped as "FOR ATTORNEY'S EYES ONLY
8 INFORMATION" if the Producing Entity has designated the
9 electronic media containing the documents as "FOR ATTORNEY'S
10 EYES ONLY INFORMATION" and the printouts do not reflect the
11 legend.

12 6. Within thirty (30) days of final termination of this action, including all
13 appeals, all copies and samples of confidential information and any other
14 summaries, abstracts, excerpts, indices, and descriptions of such information shall
15 be returned to the producing entity or its counsel or destroyed at the option of the
16 party in possession of any such information. In the event the party elects to
17 destroy rather than return such confidential information, the party must verify in
18 writing to the producing entity that such information has been destroyed.

19 7. This Protective Order shall survive the final termination of this action
20 and continue to be binding upon all entities to whom the information is disclosed
21 hereunder.

- 22 8. This Order shall not preclude any entity from exercising any rights or

1 raising any objections otherwise available to it under the rules of discovery and
2 evidence.

3 IT IS SO STIPULATED.

4 ///

5
6 LAW OFFICE OF ANDREW C. BOHRNSEN,
7 P.S.

8
9 DATED: _____ By: s/ Andrew C. Bohrsen
10 ANDREW C. BOHRNSEN, WSBA #5549
11 Attorney for Def. Delta Petroleum Corp.

12 JOHNSON ANDREWS & SKINNER, P.S.

13 DATED: _____ By: s/ Pamela M. Andrews
14 PAMELA M. ANDREWS, WSBA #14248
15 Attorney for Def. Delta Petroleum Corp.

16 WALTHER, THOMPSON, KINDRED,
17 COSTELLO & WINEMILLER, P.S.

18 DATED: _____ By: s/ Patrick C. Cook
19 PATRICK C. COOK, WSBA #28478
20 Attorney for Plaintiff

21 SPENCE LAW FIRM, LLC

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1
2 DATED: _____

By: s/ Grant H. Lawson
GRANT H. LAWSON
Attorney for Plaintiffs

3
4 ///

5
6 ///

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE, LLP

7
8
9 DATED: _____

By: s/ William H. Walsh
WILLIAM H. WALSH, WSBA #21911
Attorney for Defs. Sierra Engineering, Deans
and Drollinger

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11
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13 IT IS SO ORDERED.

14 DATED: September 9, 2009

15
16 *s/ Fred Van Sickle*
JUDGE FRED VAN SICKLE

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